



North Dakota Office of State Tax Commissioner

2003 Financial Institution Tax

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Tax Commissioner

General instructions
Program instructions
Schedule instructions

Form 35 Instructions

To All Financial Institutions:

This instruction booklet will help you complete the financial institution tax return, Form 35. Use these instructions along with the financial institution tax WebFile program. More information about this program is on page one of this booklet or visit our Web site at www.ndtaxdepartment.com.

As you prepare your return, please consider the following questions:

- **Who must file?** Form 35 must be used by financial institutions as defined in North Dakota Century Code § 57-35.3-01(2). See page one inside for the definition of a financial institution.
- **What if I don't have access to the Internet?** In case you don't have access to the Internet, read the alternative procedures on page one of this booklet.

When you use electronic services you help us maximize our capabilities. If you have questions, need tax forms, or would like other information about North Dakota's taxes, visit our Web site at www.ndtaxdepartment.com.

Suggestions from taxpayers provide us with valuable input. Feel free to let us know what you think we are doing well and what we can do to improve our service.

Please phone, write, or e-mail us if you would like additional information on the WebFile program or if you have questions as you are completing this return. You may contact us at the following:

- (701) 328-2046
- corptax@state.nd.us
- 600 E Boulevard Ave., Dept. 127,
Bismarck ND 58505-0599

Thank you,

RICK CLAYBURGH
TAX COMMISSIONER

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2003 Legislative Changes

North Dakota Domestic Dividend Exclusion

Effective retroactively for taxable years beginning after December 31, 1999, the North Dakota domestic dividend exclusion is repealed. This legislation resulted because of the North Dakota Supreme Court decision in D.D.I., Inc. v. State Tax Commissioner, 2003 ND 32, 657 N.W. 2d 228.

Time Period for Assessment on Amended Returns

Effective after December 31, 2002, for amended returns filed under the 6-year statute in N.D.C.C. § 57-38-38(3), two years are allowed to audit and assess additional tax attributable to the changes or corrections on the amended return. Years, other than the amended year, may be audited and assessed if they are affected by the changes or corrections made in the amended year.

Creation of Commerce Authorities

The 2003 legislature authorized the creation of commerce authorities by political subdivisions in North Dakota. Effective for taxable years beginning after December 31, 2002, any property in North Dakota acquired by a commerce authority, and any income derived from the ownership, operation, or control of the property, is exempt from state taxation to the same extent as other property used for public purposes. Bonds issued by a commerce authority, together with any interest or other income from the bonds, are also exempt from North Dakota income tax.

Creation of Port Authorities

The 2003 legislature authorized the creation of port authorities by political subdivisions in North Dakota. Effective July 1, 2003, any property in North Dakota acquired by a port authority, and any income derived from the ownership, operation, or control of the property, is exempt from state taxation to the same extent as other property used for public purposes. Bonds issued by a port authority, together with any interest or other income from the bonds, are also exempt from North Dakota income tax.

Increase to Renaissance Zone Size

Effective August 1, 2003, exceptions to the 20-block limit on the size of a renaissance zone are provided.

Renaissance Fund Organization (RFO) Use of Funds

Changes to the renaissance zone law allow an RFO to use its funds to invest anywhere within the boundaries of any city in North Dakota that has a designated renaissance zone. The changes also limit investments in areas located outside a renaissance zone and ease other rules dealing with percentages of use.

2003 Federal Tax Law Changes

On May 28, 2003, the Federal Jobs and Growth Tax Relief Reconciliation Act of 2003 became effective. North Dakota's income tax laws automatically recognize any change in the 2003 Act that affects the calculation of federal taxable income, the starting point in the calculation of North Dakota taxable income. This includes the 50 percent additional first-year depreciation and the increase in the section 179 expense deduction. No adjustments for these items are required on the North Dakota financial institution tax return.

Looking Ahead to Tax Year 2004

Federal Tax Deduction

Effective for taxable years beginning after December 31, 2003, new language was inserted to maintain the federal income tax deduction for financial institution tax purposes and to revise cross-references to statutory adjustments in the income tax law.

Specific instructions for the financial institution tax program

The 2003 financial institution tax computer program, developed in a menu format, is available on the Web. On screen buttons, instructions, and prompts are provided to assist in operating the program and completing the return.

Access the WebFile program at:
www.ndtaxdepartment.com/financialinst/elecfileing/

In order to access the program and file a return, taxpayers must have a user name and password. (If a financial institution tax return was filed last year, a new user name and password is not required.) To obtain a user name and password, contact the Office of State Tax Commissioner at (701) 328-2703. Once you sign on using the given name and password, you will be asked to change your password. The password limitations are as follows:

- Must contain a minimum of six (6) characters; and
- At least one character must be a number.

Please note that the user name and passwords are case sensitive.

To enter data (*dollar amounts must be entered as whole dollars*) use the "Tab" key to move to the data input fields; to move backward in the data input fields, use the "Tab" and "Shift" keys together. Corrections are easy: tab to the data input field and re-enter the correct data. Use the mouse pointer (or space bar) to click the desired options, and to answer "yes" to questions.

Entries are saved each time you progress to a new form or schedule, or by hitting the "save" icon on the menu bar.

Be sure to review the return before filing by clicking on the "Preview This Return" button on the FIT WebFile Filing Information page. **Once a return is filed, you can no longer edit the return. All changes after that point will have to be made by filing an amended return.**

The return can be saved as a ".pdf" document to diskette, the hard drive, or to a network drive for the taxpayer's records.

If you don't have Internet access, contact the Office of State Tax Commissioner by calling (701) 328-2046.

For technical assistance with the program, call (701) 328-2703.

General instructions

Who must file

A financial institution located or doing business within North Dakota must file a North Dakota financial institution tax return, Form 35.

A financial institution includes:

1. A corporation or other business entity registered under state law as a bank holding company, registered under the Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the National Housing Act, as amended;
2. A national bank organized and existing as a national bank under the National Bank Act;
3. A savings association or federal savings bank as defined under the Federal Deposit Insurance Act;
4. A bank or thrift institution incorporated or organized under the laws of any state;
5. A trust company organized under the laws of any state, the United States, a dependency or insular possession of the United States, or a foreign country;
6. A corporation organized under Public Law 63.6, § 25A (relating to foreign banking);
7. An agency or branch of a foreign depository as defined under Public Law 95-369;
8. A production credit association organized under the Farm Credit Act of 1933;
9. A corporation whose voting stock is more than 50% owned directly or indirectly by any of the entities described in 1 through 8 above. This does not include an insurance company taxable under N.D.C.C. § 26.1-03-17 or a corporation taxable under N.D.C.C. ch. 57-38;
10. A corporation or other business entity deriving more than 50% of its total gross income for financial accounting purposes from finance leases; or
11. Any other person or business entity deriving more than 50% of its gross income from activities that entities described in 2 through 8 and 10 above are authorized to transact. This does not include an insurance company taxable under N.D.C.C. § 26.1-03-17, a real estate broker, a securities dealer, or a person or entity taxable under N.D.C.C. ch. 57-38.

How to file

Form 35 must be Web filed. The return consists of a Web filed Form 35, a properly completed and signed 2003 Financial Institution Tax Remittance Form (Form 35RF), and all required enclosures. A return will not be considered complete until a Form 35RF, is submitted.

Taxable year

Form 35 must be completed on a calendar year (*January through December*) basis, regardless of the taxable year used for federal tax purposes.

Financial institutions whose federal taxable year ends on a date other than December 31 must enclose a statement reconciling their fiscal year tax information to a calendar year basis.

A financial institution which was previously subject to the provisions of N.D.C.C. ch. 57-38 and filed its North Dakota corporation income tax return, Form 40, on a fiscal year basis, is now required to file its financial institution tax return, Form 35, on a calendar year basis. If applicable, a Form 40 must be completed for the full fiscal year ending in 2003, and a financial institution tax return must be completed for the short period beginning in 2003 and ending on December 31, 2003.

When to file

Form 35 must be filed on or before April 15 following the end of the calendar year.

Extension of time to file. An extension of time to file Form 35 may be obtained in one of the following ways:

- **Federal extension**
If an extension of time to file the federal income tax return is obtained, the federal extension is automatically accepted for North Dakota financial institution tax purposes. The extension of time to file Form 35 is the same number of months as the extension of time to file the federal return.
- **State extension**
If a federal extension is not obtained, or if an extension of time beyond the time period covered by a federal extension is needed, a North Dakota extension may be obtained by completing and filing North Dakota Form 101, or by submitting a written request prior to the due date (*or extended due date*) of the return.

If an extension is obtained, click the extension box on the web file program under "Begin New Return" and enclose a copy of

the federal extension form or the approved North Dakota extension request with Form 35RF.

An extension of time to file Form 35 does not extend the time to pay any net tax liability due. If an extension of time to file the return is obtained, see "Payment of tax" for information on how and when to pay.

Statement for pass-through entity owners

On or before the due date (*or extended due date*) for filing Form 35, a financial institution that is a Subchapter S corporation or partnership, or a limited liability company treated like a partnership, must give a statement to each shareholder, partner or member—limited to individuals, estates or trusts—containing all of the following:

1. Name, address and federal EIN of the financial institution;
2. Calendar year for which the statement is provided;
3. An amount, identified as "N.D.C.C. ch. 57-35.3 adjustment amount," equal to the shareholder's, partner's or member's pro rata share of the adjustment amount below:
 - If the Single Entity Method is used to complete Form 35, the adjustment amount is determined by subtracting the amount on Schedule SA, line 15 from the amount on page 1, line 1 and multiplying the difference by the apportionment factor (*page 1, line 5*). Add to this result the amount on page 1, line 7 and subtract the amount on page 1, line 11. (*Federal income tax assigned to exempt income on line 11 must be added back.*)
 - If the Combined Report Method is used to complete Form 35, the adjustment amount is determined by subtracting the amount on Schedule SA, line 15 from the amount on Schedule WW, line 3 and multiplying the difference by the apportionment factor (*page 1, line 5*). Add to this result the amount on page 1, line 7 and subtract the amount on page 1, line 11. (*Federal income tax assigned to exempt income on line 11 must be added back*); and
4. The statement: **This statement contains information that is important to the preparation of your North Dakota income tax return. For instructions on how to report this information on your North Dakota income tax return, contact the North Dakota Office of State Tax**

Commissioner and ask for the Income Tax Guideline: Adjustment For Income (Loss) From S Corporation, Partnership or LLC Subject To N.D.C.C. ch. 57-35.3.

Enclosures

A complete copy of the federal income tax return as filed with the Internal Revenue Service must be enclosed with Form 35RF.

Incomplete return

All applicable lines on Form 35 must be completed. A return with incomplete lines or schedules, or with notations such as "see attached statement" or "available upon audit," is not properly filed and will be returned to the taxpayer.

Payment of tax

The financial institution net tax liability is payable as follows:

- **State general fund portion—Due APRIL 15, 2004**
The state general fund portion of the net tax liability (*on Form 35, page 1, line 23*) must be paid on or before April 15 following the end of the taxable year. The minimum tax due is \$14.00. If an extension of time to file the return is obtained, the financial institution must determine the state general fund portion of its net tax liability and remit this amount along with Form 35PV, North Dakota Financial Institution Payment Voucher. The Form 35PV is located on the WebFile program under "Prepare a Payment Voucher."
 - **Financial institution tax distribution fund portion—Due JANUARY 15, 2005**
The financial institution tax distribution fund portion of the net tax liability (*on Form 35, page 1, line 23*) must be paid on or before January 15 of the second year following the taxable year. The minimum tax due is \$36.00. The Office of State Tax Commissioner will send a payment notification to the financial institution prior to the January 15 due date.
- Payment for each portion of the tax must be made by check or money order payable to: **State Tax Commissioner.**

Payment may also be made by electronic funds transfer. Information regarding electronic payments can be found on the department's Web site at www.ndtaxdepartment.com, under Financial Institutions, Electronic Filing.

Information on computing penalty and interest is found on page 4.

Where to file or obtain additional forms and instructions

Completed returns and written requests for information and forms should be mailed to the Office of State Tax Commissioner, 600 E. Boulevard Ave., Dept. 127, Bismarck, ND 58505-0599.

Obtain North Dakota tax forms, send messages, and find other information on the Office of State Tax Commissioner's Web site at www.ndtaxdepartment.com.

Forms and instructions may also be obtained by calling (701) 328-2046.

For the speech or hearing impaired, call Relay North Dakota at 1-800-366-6888.

Instructions for "Begin New Return"

Be sure all the information entered on this Web page is correct before advancing to the next Web page. You cannot return to this Web page at a later time to edit it. To correct any mistakes made on this Web page, you must delete the return and start over.

Short period return

A financial institution required to file a federal short period return must file a North Dakota short period return for the same taxable period. The North Dakota return is due on or before the 15th day of the fourth month following the close of the short period.

When filing a short period return, be sure to click the short period box on the WebFile program under 'Begin New Return'. A new user name and password is needed for the second short period return filed for the same form year.

The financial institution tax distribution fund portion of the net tax liability for a short period return must be paid on or before January 15 of the year following the return due date.

Amended returns

In general, an amended return must be filed if:

- An amended federal income tax return is filed;

- North Dakota income or federal tax is changed as the result of a federal audit;
- An error is discovered on a previously filed return; or
- A refund of federal income tax deducted on a previously filed North Dakota return is received.

Amended returns for taxable years beginning before January 1, 1997.

Except for taxpayers who filed Form 40, obtain a blank copy of the applicable form for the taxable year affected. Write "Amended" at the top of the form and complete the form using the revised information.

Taxpayers who filed Form 40 must use Form 40X.

Amended returns for taxable years beginning after December 31, 1996, and ending before January 1, 2001.

Access the Form 35 program for the appropriate taxable year from the Office of State Tax Commissioner's home page. Using the revised information, complete the form. Be sure to check the amended box on the program. Label the diskette with the words "Amended Form 35".

Amended returns for taxable years beginning after December 31, 2000.

Access the WebFile program for the appropriate taxable year from the Office of State Tax Commissioner's home page. Complete the form using the revised information. Be sure to click the amended box on the WebFile program under 'Begin a New Return.'

Reporting methods

The North Dakota financial institution tax applies only to that portion of a financial institution's taxable income which is derived from or attributable to sources within North Dakota.

A financial institution must file using the applicable method below:

- **Single entity method**
Except where the combined report method applies, a financial institution must use the single entity method of filing.
- **Combined report method**
The combined report method must be used if the financial institution is engaged in a unitary business and one or more of the corporations in the unitary group conducts business outside North Dakota.

A unitary business is a group of corporations carrying on activities in which its component parts transfer value among themselves through:

1. **Unity of ownership**—The group is under the common control of a single corporation, which is also a member of the group. Control exists when the single corporation owns, directly or indirectly, more than 50% of the voting stock of another corporation;
2. **Unity of operation**—The group receives benefits from functional integration or economies of scale; and
3. **Unity of use**—The group contributes to or receives benefits from centralized management and policy information.

A consolidated North Dakota financial institution tax return may not be filed by two or more financial institutions, even though the combined report method applies. Each financial institution must file its own return.

Instructions for "Information Menu"

If the **Single Entity Method** is used for both North Dakota and federal purposes, enter the federal taxable income from:

- Federal Form 1120, line 30; or
- Federal Form 1120-A, line 26; or
- Federal Form 1120S, Schedule K, line 23; or
- Federal Form 1065, Analysis of Net Income (Loss) Schedule, Line 1.

If the **Single Entity Method** is used for North Dakota purposes and the financial institution is included in a consolidated Federal Form 1120, enter the financial institution's federal taxable income before consolidating adjustments/eliminations from:

- A pro forma separate company federal income tax return, line 30; or
- The schedule showing gross income and deductions, which supports the consolidated federal taxable income.

If the **Combined Report Method** is used for North Dakota purposes, federal taxable income is entered on Schedule WW.

North Dakota loss carryforward

A net operating loss attributable to North Dakota sources incurred for a taxable year beginning after December 31, 1990, is deductible for financial institution tax purposes. A North Dakota net operating loss may only be carried forward for the same number of years allowed under federal income tax law. Enter the accumulated amount of North Dakota net operating losses incurred for taxable years beginning after December 31, 1990, less the accumulated amount of the same losses previously deducted.

In the case of a financial institution that was subject to N.D.C.C. ch. 57-38 for taxable years beginning before January 1, 1997, a net operating loss attributable to North Dakota sources incurred for **any taxable year** is deductible for financial institution tax purposes. A North Dakota net operating loss may only be carried forward for the same number of years allowed under federal income tax law. Enter the accumulated amount of North Dakota net operating losses incurred less the accumulated amount of the same losses previously deducted.

Enclose a worksheet with Form 35RF showing the amount of North Dakota net operating loss incurred and deducted for each year.

Income allocated to North Dakota

Enter nonbusiness income allocated to North Dakota less related expenses. Nonbusiness income is allocated to North Dakota if the income is attributable to North Dakota. Expenses must be attributed to this income in a manner which fairly distributes all of the financial institution's expenses to its various types of income.

Contributions

Tax credits are available for making contributions to qualifying nonprofit private institutions of secondary and higher education located in North Dakota (including the North Dakota Independent College Fund). The credits are available if the contribution(s) are made by the due date of this return (*without extension*). The tax credits may reduce only the state general fund portion of the financial institution tax liability, but not below the \$14.00 minimum (2/7 of the \$50.00 total minimum tax). The tax credit for contributions made to all eligible schools in **each** category of institution is equal to the lesser of:

- 50% of the contributions;
- 5.7% (.057) of the financial institution tax balance on line 18; or
- \$2,500.00.

Enter on line 21 the tax credit computed for contributions to nonprofit private institutions of higher education (*and the North Dakota Independent College Fund*), and enter on line 22 the tax credit computed for contributions to nonprofit private institutions of secondary education.

For each contribution, enclose a copy of a receipt from the nonprofit private institution or a cancelled check (front and back) with Form 35RF.

Renaissance Zone income exemption

If the financial institution is claiming exempt income as a result of the Renaissance Zone Act, enter the amount from Schedule RZ.

Attach the completed Schedule RZ.

Schedule RZ can be obtained by contacting the Office of State Tax Commissioner at (701) 328-2046.

Prepaid Tax

Enter an amount only if a Form 35PV was previously submitted.

Penalty and interest

The Office of State Tax Commissioner will notify the taxpayer of any penalty and interest owed on tax due and any interest accrued on a refund. If desired, penalty and interest may be computed and entered on the return by the taxpayer.

If the full amount of the tax is not paid by the due date, the current provisions for penalty and interest are:

- A penalty equal to 5% of the tax due or \$5.00, whichever is greater; and
- Interest computed at the rate of 1% per month (or a fraction of a month), of the tax due except the month in which the tax became due.

If the return is not filed by the due date (or extended due date), a penalty of 5% of the net tax liability or \$5.00, whichever is greater, applies for the month in which the return is due, with an additional 5% for each additional month (or a fraction of a month) during which the delinquency continues, not to exceed 25% of the net tax liability.

If there is an overpayment on Form 35, page 1, line 31, interest at the rate of 1% per month or fraction of a month accrues on the overpayment beginning forty-five days after the due date of the return (without extension) or after the date the return is filed, whichever date is later.

If a financial institution has an extension of time to file its North Dakota return, but has not prepaid its entire state tax liability by the regular due date of the return, extension interest at the rate of 12% per annum applies.

A "unitary group" is a group of affiliated corporations engaged in a unitary business, irrespective of the country or countries in which the corporations conduct business activity.

An "affiliated corporation" means a parent corporation and any corporation of which more than fifty percent of the voting stock is owned directly or indirectly by the parent corporation or another member of the unitary group.

A financial institution filing its North Dakota income tax return using the combined report method must include only the apportionment factors and statutory adjustments of the unitary group.

Instructions for Schedule SA

North Dakota statutory adjustments must be made on a basis consistent with the filing method indicated on WebFile Return Summary information.

Additions

Line 3

Taxes measured by income

Enter all taxes, including franchise and privilege taxes, measured by income which were paid to any taxing authority (including a foreign country) and deducted in determining federal taxable income.

Line 4

Interest income from state and local obligations

Enter interest income from state and local obligations, including the State of North Dakota and its political subdivisions, which is exempt from federal income tax.

Line 5

Federal charitable contributions deduction

Enter the amount of charitable contributions deducted in determining federal taxable income under Section 170 of the Internal Revenue Code.

Line 6

Federal bad debt reserve deduction

(Applies only to a building and loan or a savings and loan association)

Enter the amount of a bad debt reserve deduction computed in determining federal taxable income under Section 585 of the Internal Revenue Code.

Subtractions

Line 9

Bad debt deduction

(Applies only to a building and loan or a savings and loan association, use this line only if an entry is made on Schedule SA, line 6.)

If the bad debt reserve method under Section 585 of the Internal Revenue Code is used to account for bad debts for federal income tax purposes, enter an amount equal to the deduction that would have been allowed under Section 166(a) of the Internal Revenue Code if a deduction had not been claimed under Section 585 or 593 of the Internal Revenue Code.

Line 10

I.R.C. § 593(g) adjustment

Enter the amount of any adjustment taken into account for federal income tax purposes under Section 593(g) of the Internal Revenue Code.

Line 11

Expenses related to federally-exempt income

Enter any interest expense and other expenses relating to income exempt from federal income tax if:

- The federally-exempt income is taxable under the financial institution tax; **and**
- The interest expense and other expenses were disallowed as deductions in determining federal taxable income under Sections 171(a)(2), 265, or 291 of the Internal Revenue Code.

Line 13

Charitable contributions deduction

Enter an amount equal to the deduction for charitable contributions that would be allowed for federal income tax purposes under Section 170 of the Internal Revenue Code if the percentage limitation under Section 170(b)(2) of the Internal Revenue Code was applied in all relevant taxable years to North Dakota taxable income rather than federal taxable income. For this purpose, North Dakota taxable income is to be computed without regard to the deduction on this line and, if applicable, the deduction on Schedule SA, line 9. In addition, no deduction is allowed for a contribution made to a nonprofit private institution of secondary or higher education if and to the extent that a tax credit is allowed. *(See Form 35, page 1, lines 21 and 22.)*

Instructions for Schedule WW

All references to "corporation(s)" include financial institutions.

An apportioning financial institution, which is a member of a unitary group, is required to file its North Dakota Financial Institution tax return using the combined report method. See Reporting methods on page 3 of General instructions.

Line 14**Allocable income**

Enter all nonbusiness income less related expenses. The method used to attribute expenses to nonbusiness income must fairly distribute all of the financial institution's deductions to all of its various types of income.

If an entry is made on this line, the following must be enclosed with Form 35RF:

- A worksheet showing each type of income or loss item allocated and its amount;
- Documentation showing the state to which the item of income or loss was allocated (*a copy of the other state's tax return is preferred*); and
- A narrative explaining the reasons for allocating each item of income or loss.

Instructions for Schedule FACT

This schedule must be completed by a financial institution that conducts its business activity within and without North Dakota, and must be completed on a basis consistent with the filing method indicated on WebFile Return Summary information.

The amounts to enter for property, payroll, and receipts must be for the calendar year for which the return is filed. For a complete discussion of the apportionment factor, see N.D.C.C. §§ 57-35.3-13, et. seq.

Property factor

The property factor is a fraction, the numerator of which is the average value of the financial institution's property within North Dakota and the denominator of which is the average value of the financial institution's or the unitary group's property within and without North Dakota.

Only include property for which the income or expenses are included, or would have been included if not fully depreciated or expensed, in the computation of the apportionable income base.

Do not include the value of construction in progress.

Average value of owned property.

The "average value" of owned property is determined by adding the value of the property on the first and last days of the calendar year and dividing the sum by two.

If this general averaging method does not properly reflect average value, the taxpayer may elect, or the tax commissioner may require, averaging on a more frequent basis. The valuation of the property depends on the type of property—see the specific line instructions for lines 1 through 6 for how to value the property. The valuation of rented property is discussed in the specific instructions for line 7.

Property located within North Dakota.

In general, property is located within North Dakota if it is physically located or used within North Dakota. The following apply for determining whether certain types of property are located within North Dakota:

- Transportation property is located within North Dakota to the extent it is used within this state. A motor vehicle is deemed used entirely within North Dakota if it is registered in this state. An aircraft is deemed used within this state to the extent of the number of landings within North Dakota. If the extent of use within North Dakota cannot be determined, transportation property is deemed to be used wholly within this state if its principal base of operations is within North Dakota.
- Loans and credit card receivables are located within North Dakota if properly assigned to a regular place of business within this state. They are properly assigned if there is a preponderance of substantive contacts with a regular place of business within North Dakota. Substantive contacts—solicitation, investigation, negotiation, approval, and administration of the loan—are determined based on the facts and circumstances of each case.

Lines 1 through 3**Buildings and other fixed depreciable assets, land, and inventories**

In the North Dakota column, enter the average value of buildings and other fixed depreciable assets, land, and inventories owned by the financial institution and located within North Dakota. These assets must be valued at the original cost or other basis used for federal income tax purposes without regard to depreciation, amortization or depletion.

In the Total column, enter the average value of the same types of property located or used within and without North Dakota.

Line 4**Loans**

In the North Dakota column, enter the average value of loans located within North Dakota. Value loans at the outstanding principal balance without regard to any reserve for bad debts. Do not include the portion of a loan charged off or a specifically allocated reserve that is treated as charged off for federal income tax purposes.

In the Total column, enter the average value of loans located within and without North Dakota.

Line 5**Credit card receivables**

In the North Dakota column, enter the average value of credit card receivables located within North Dakota. Value credit card receivables at the outstanding principal balance without regard to any reserve for bad debts. Do not include the portion of credit card receivables charged off for federal income tax purposes.

In the Total column, enter the average value of credit card receivables located within and without North Dakota.

Line 6**Other**

In the North Dakota column, enter the average value of property not included on lines 1 through 5 which is located within North Dakota.

In the Total column, enter the average value of property not included on lines 1 through 5 which is located within and without North Dakota.

Line 7**Rented property**

For leased real and tangible personal property located within North Dakota, enter in the North Dakota column the amount determined by multiplying the annual gross rents by eight. Do not include rental payments for leased property that is deemed to be owned by the financial institution under federal income tax law.

In the Total column, enter the amount determined by multiplying by eight the annual gross rents on all leased real and tangible personal property that is located within and without North Dakota.

If this general valuation method results in inaccurate valuations, the taxpayer may request, or the tax commissioner may require, another method of valuation.

Payroll factor

The payroll factor is a fraction, the numerator of which is the total compensation paid within North Dakota and the denominator of which is the total compensation paid by the financial institution or the unitary group within and without North Dakota. Only include compensation included in the computation of the apportionable income base for the calendar year.

“Compensation” means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services to the extent the amount is included in the employees’ gross income as defined under the Internal Revenue Code.

Compensation is paid in this state if any one of the following tests, applied consecutively, is met:

- The employee’s services are performed entirely within this state.
- The employee’s services are performed both within and without the state, but the service performed without the state is incidental to the employee’s service within the state.
- If the employee’s services are performed both within and without this state, the employee’s compensation must be attributed to North Dakota:
 1. If the employee’s principal base of operations is within North Dakota;
 2. If there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or
 3. If the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee’s residence is in this state.

Line 9

Wages, salaries, commissions and other compensation

In the North Dakota column, enter compensation paid to employees within North Dakota for personal services.

In the Total column, enter compensation paid to employees within and without North Dakota for personal services.

Receipts factor

The receipts factor is a fraction, the numerator of which is the financial institution’s receipts within North Dakota

and the denominator of which is the financial institution’s or the unitary group’s receipts within and without North Dakota. In general, only include receipts which constitute business income and are included in the computation of the apportionable income base for the calendar year.

Line 10

Rentals and subrentals

Enter in the North Dakota column:

- Rents from the lease of real property owned by the financial institution and located within North Dakota;
- Rents from the sublease of real property located within North Dakota;
- Rents from the lease of tangible personal property (*except transportation property*) owned by the financial institution and located within North Dakota when first placed in service by the lessee; and
- Rents from the lease of transportation property to the extent used in North Dakota. A motor vehicle is deemed used entirely within North Dakota if registered in this state. An aircraft is deemed to be used in this state to the extent of the number of landings in North Dakota. If the extent of use in North Dakota cannot be determined, transportation property is deemed used entirely within this state if the property has its principal base of operations in North Dakota.

In the Total column, enter total rents within and without North Dakota from the lease and sublease of the same types of property.

Line 11

Interest (including fees or penalties in the nature of interest)

Enter in the North Dakota column:

- Interest from loans **secured** by real property if:
 1. The real property is located within North Dakota,
 2. The real property is located within and without North Dakota and more than fifty percent of the fair market value of the real property is located within North Dakota, or
 3. More than fifty percent of the fair market value of the real property is not located within any one state and the borrower is located within North Dakota;
- Interest from loans **not secured** by real property where the borrower is located within North Dakota;

- Interest from credit card receivables and fees (*such as annual fees*) charged to cardholders, where the cardholder’s billing address is within North Dakota; and
- Interest from investment/trading assets and activities. See **Investment and trading receipts** in the shaded box on page 7 for information on what to include in the factor.

In the Total column, enter total interest receipts within and without North Dakota from the same sources.

Line 12

Net gains from sales or exchanges

“Net gains” is the sum of all gains resulting from the sale of loans, credit card receivables, and investment/trading assets. A loss resulting from such sales is excluded from the computation of net gains. Net gains must be computed for each category below.

Enter in the North Dakota column:

- Net gains from the sale of loans **secured** by real property, (*including income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code*) determined by multiplying the net gains by a fraction, the numerator and denominator of which consist of the respective amounts of interest from all loans **secured** by real property reported in the receipts factor on line 11;
- Net gains from the sale of loans **not secured** by real property, (*including income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code*) determined by multiplying the net gains by a fraction, the numerator and denominator of which consists of the respective amounts of interest from all loans **not secured** by real property reported in the receipts factor on line 11;
- Net gains from the sale of credit card receivables determined by multiplying the net gains by a fraction, the numerator and denominator of which consist of the respective amounts of interest from all credit card receivables included in the receipts factor on line 11; and
- Net gains from the sale of investment/trading assets. See **Investment and trading receipts** in the shaded box on page 7 for information on what to include in the factor.

In the Total column, enter the total net gains within and without North Dakota from the same sources.

Line 13**Dividends**

In the North Dakota column, enter dividends from investment/trading assets and activities. See **Investment and trading receipts** in the shaded box on this page for information on what to include in the factor.

In the Total column, enter total dividends from investment/trading assets and activities within and without North Dakota.

Line 14**Loan servicing fees**

Enter in the North Dakota column:

- Loan servicing fees for loans owned by the financial institution and **secured** by real property, multiplied by a fraction, the numerator and denominator of which consist of the respective amounts of interest from all loans **secured** by real property reported in the receipts factor on line 11;
- Loan servicing fees related to loans owned by the financial institution and **not secured** by real property, multiplied by a fraction, the numerator and denominator of which consist of the respective amounts of interest from all loans **not secured** by real property reported in the receipts factor on line 11; and
- Loan servicing fees received for servicing secured or unsecured loans of others if the borrower is located within North Dakota.

In the Total column, enter total loan servicing fees within and without North Dakota from the same sources.

Line 15**Other**

Enter in the North Dakota column:

- Receipts from credit card merchant discount if the commercial domicile of the merchant is within North Dakota. Reduce these receipts by any related cardholder chargebacks. Do not reduce these receipts by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its cardholders;
- Credit card issuer's reimbursement fees equal to the amount determined by multiplying the fees by a fraction, the numerator and denominator of which consist of the respective amounts of interest from all credit card receivables included in the receipts factor on line 11;
- Receipts from services not otherwise apportioned if:

Investment and trading receipts**Information in this section**

- Defines what is meant by investment/trading assets and activities;
- Describes which receipts from investment/trading assets and activities to include in the receipts factor on Schedule FACT; and
- Explains how to determine the amount of receipts from investment/trading assets and activities to include in the North Dakota column on lines 11, 12 and 13 of Schedule FACT.

Investment/trading assets and activities defined

Investment/trading assets and investment activities include:

- Investment securities;
- Trading account assets;
- Federal funds;
- Securities purchased and sold under agreements to resell or repurchase;
- Options;
- Futures and forward contracts;
- Notional principal contracts (*such as swaps*);
- Equities;
- Foreign currency transactions; and
- Other investment/trading assets and activities.

Receipts to include in receipts factor on Schedule FACT

Interest, dividends, net gains from sales or exchanges, and other income from investment/trading assets and activities are included in the receipts factor on Schedule FACT. Also included are:

- The amount by which interest income from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements; and
- The amount by which interest, dividends, gains and other income from trading assets and activities (*including assets and activities in the matched book, in the arbitrage book, and*

foreign currency transactions) exceeds amounts paid in lieu of interest and dividends plus losses from the same assets and activities.

Receipts from investment/trading assets and activities to include in the North Dakota column on lines 11, 12 and 13 of Schedule FACT

The amount of receipts from investment/trading assets and activities to include in the North Dakota column on lines 11, 12 and 13 of Schedule FACT must be determined under one of the following methods:

Method 1 (Average value method)

Under this method, multiply the income from investment/trading assets and activities by the following fraction:

AVERAGE VALUE of investment/trading assets assigned to a regular place of business within North Dakota

AVERAGE VALUE of all investment/trading assets within and without North Dakota

For this purpose, "AVERAGE VALUE" is determined in the same manner as the average value of tangible personal property is determined for property factor purposes. See instructions for **Property Factor** on page 5.

Method 2 (Gross income method)

Under this method, multiply the income from investment/trading assets and activities by the following fraction:

GROSS INCOME of investment/trading assets assigned to a regular place of business within North Dakota

GROSS INCOME of all investment/trading assets within and without North Dakota

If the taxpayer elects, or the tax commissioner requires the use of Method 2 (*Gross income method*), the taxpayer must use Method 2 on all subsequent tax returns unless the taxpayer obtains prior permission from the tax commissioner to use, or the tax commissioner requires, a different method.

For more information regarding investment and trading receipts, refer to N.D.C.C. § 57-35.3-15(13).

1. The services are performed within North Dakota; or
 2. The services are performed within and without North Dakota and a greater proportion of the income-producing activity is performed within North Dakota based on cost of performance; and
- Any other receipts, including receipts from investment/trading assets and activities, not specifically described in the instructions for lines 10 through 14 which are properly included in the apportionable income base.

In the Total column, enter total other receipts within and without North Dakota from the same sources.

Line 16

Throwback receipts

If the financial institution's commercial domicile is in North Dakota, enter on this line (in the *North Dakota column*) any receipts included in the denominator but not in the numerator of lines 10 through 15 which were not assigned to any state.

Instructions for Schedule FTD

Use the line instructions that apply to the box that is checked on WebFile Return Summary information.

Single Entity Method

A financial institution filing as a single entity for **both** North Dakota and federal purposes must complete lines 1, 2, 3, 7, 8, 9, 10, 11, 12, 13 and 19. Enter 1.000000 on line 6.

A financial institution filing as a single entity for North Dakota purposes **and** included in a consolidated Federal Form 1120 must complete lines 1-13 and 19.

Line 1

Federal income tax liability

Enter the federal income tax liability from the federal income tax return filed with the IRS as follows:

- If Federal Form 1120 was used, enter the amount from line 31; or
- If Federal Form 1120-A was used, enter the amount from line 27; or
- If Federal Form 1120S was used, enter the investment credit recapture tax computed on Federal Form 4255 and included on line 22c.

Line 2a

Alternative minimum taxable income adjustments

Total the adjustments from Federal Form 4626, Page 1, that **do not** become a part of North Dakota net income, and enter the total here.

Line 2b

Adjusted current earnings adjustments

Total the Federal adjusted current earnings (ACE) adjustments from the Federal ACE worksheet, that **do not** become a part of North Dakota net income, and enter 75% of the total here.

Line 2d

Federal alternative minimum taxable income

Enter the amount of the financial institution's Federal alternative minimum taxable income from the Federal Form 4626.

Line 2f

Federal alternative minimum tax

Enter the financial institution's Federal alternative minimum tax. Enclose a worksheet with Form 35RF.

Line 4

Federal income tax liability

Enter the financial institution's federal income tax liability. Enclose a worksheet substantiating this computation with Form 35RF.

Line 5

Profit company federal income tax liability

Enter the total federal income tax liability for all corporations included in the consolidated federal return with each corporation's federal income tax liability computed on a pro forma separate company return. The separate company tax liability of any corporation which does not result in a positive tax liability shall be zero. Enclose a worksheet substantiating this computation with Form 35RF.

Line 8

Federal taxable income

Enter the amount from Form 35, line 1.

Line 9

Income not taxable to North Dakota

Enter the income (*before apportionment*) included on line 8 not taxable to North Dakota, such as income allocated outside North Dakota.

Combined Report Method

The following line instructions apply to a financial institution filing its North Dakota return using the combined report method.

If a financial institution tax return includes income from more than one federal tax return, a separate pro forma Schedule FTD must be completed for each financial institution that filed a federal tax return. The amounts on lines 1, 2, 3, 7, 8 and 12 from the separate pro forma Schedule FTD's must be aggregated and the totals entered on the appropriate lines on the financial institution's Form 35.

Enclose a worksheet substantiating the computations on the separate pro forma schedules.

Line 1

Federal income tax liability

Enter the federal income tax liability from the federal income tax return filed with the IRS as follows:

- If Federal Form 1120 was used, enter amount from line 31; or
- If Federal Form 1120-A was used, enter the amount from line 27; or
- If Federal Form 1120S was used, enter the investment credit recapture tax computed on Federal Form 4255 and included on line 22c.

Line 2a

Alternative minimum taxable income adjustments

Total the adjustments from Federal Form 4626, Page 1, that **do not** become a part of North Dakota net income, and enter the total here.

Line 2b

Adjusted current earnings adjustments

Total the Federal adjusted current earnings (ACE) adjustments from the Federal ACE worksheet, that **do not** become a part of North Dakota net income, and enter 75% of the total here.

Line 2d

Federal alternative minimum taxable income

If a member of a Federal consolidated group, enter the amount of Federal alternative minimum taxable income from the consolidated Federal Form 4626.

Line 2f**Federal alternative minimum tax**

If a member of a Federal consolidated group, enter the amount of Federal alternative minimum tax from the consolidated Federal Form 1120, Schedule J.

Line 4**Federal income tax liability**

Enter the separate company pro forma federal income tax liability for all of the unitary corporations which are included in the consolidated federal return. The separate company tax liability of any corporation which does not result in a positive tax liability shall be zero. Enclose a worksheet with Form 35RF substantiating this computation.

Line 5**Profit company federal income tax liability**

Enter the total federal income tax liability for all corporations included in the consolidated federal return with each corporation's federal income tax liability computed on a pro forma separate company return. The separate company tax liability of any corporation which does not result in a positive tax liability shall be zero. Enclose a worksheet substantiating this computation with Form 35RF.

Line 8**Federal taxable income**

Enter the total federal taxable income for all unitary corporations whose income is included in the Federal Form 1120. Enclose a worksheet with Form 35RF substantiating this computation.

Line 9**Income not taxable to North Dakota**

Enter the income (*before apportionment*) included on line 8 not taxable to North Dakota, such as income allocated outside North Dakota.

Line 15**Total Income**

"Total income" is federal taxable income of those corporations which are included in the unitary group and are required to file a federal income tax return, plus or minus the adjustments (*before apportionment*)

provided in N.D.C.C. § 57-35.3-02, except for the federal income tax deduction. Use the following computation table to determine the total income to be entered on line 15.

1. Federal taxable income (from Schedule FTD, line 8)	_____
2. Total additions (from page 1, line 2)	_____
3. Balance (Add lines 1 and 2) .	_____
4. Total subtractions (from page 1, line 3)	_____
5. Balance (Subtract line 4 from line 3)	_____
6. Net intercompany adjustments in lines 2 and 4	_____
7. Total income (Subtract line 6 from line 5) Enter result here and on Schedule FTD, line 15	_____

Line 16**Income relating to federal foreign tax credit**

Enter the total taxable income from sources without the U.S., **after** loss recapture as computed on Federal form(s) 1118, Part II, Schedule B or Federal form(s) 5735.

Instructions for Schedule AMTR

North Dakota Schedule AMTR is used to compute the deduction and carryforward of Federal Alternative Minimum Tax (AMT) which has been disallowed in prior years.

Previously disallowed federal AMT may be deducted only if a federal credit for prior year minimum tax is claimed; however, the deduction may not create or increase a North Dakota net operating loss.

The deduction of federal AMT disallowed is used to reduce North Dakota income on Form 35, page 1. Any portion of the disallowed federal AMT remaining after 2003 may be carried forward to future calendar years and used to reduce North Dakota income when a federal credit for prior year minimum tax is claimed.

For more information regarding the deduction and carryforward of alternative minimum tax, refer to North Dakota Century Code § 57-38-01.3(1)(c) and North Dakota Admin. Code ch. 81-03-05.5.

Instructions for Schedule TC

Tax credits

These credits may not reduce the financial institution tax liability below the \$50.00 minimum.

- **Small Business Investment Company Tax Credit**

If the financial institution made a qualifying investment in the North Dakota Small Business Investment Company, enter 50% of the amount invested. Any unused credit may be carried forward up to seven calendar years.

Enclose a copy of the North Dakota SBIC Investment Reporting Form with Form 35RF.

- **Housing Development Fund Tax Credit**

If the financial institution made or participated in a loan from a Housing Development Fund, enter the difference between the financial institution's share of interest earned on the loan and the financial institution's share of interest that would have been earned at a treasury rate plus 3%. Any unused credit may not be carried forward.

Enclose a schedule with Form 35RF identifying each North Dakota county within which are located housing development projects funded by loans for which credits are claimed. Identify within each county:

- **the location of each project; and**
- **the dollar amount of credit attributable to each project.**
- **Renaissance Zone Tax Credit**
If the financial institution is claiming a tax credit as a result of the Renaissance Zone Act, enter the amount from Schedule RZ. Attach the completed Schedule RZ to Form 35RF. Schedule RZ can be obtained by contacting the Office of State Tax Commissioner at (701) 328-2046.